

Message

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Subject: News Update: Advocates Settle Monarch Suit After EPA Focuses On Federal Strategy (InsideEPA)

RISK POLICY REPORT - 05/05/2015

Advocates Settle Monarch Suit After EPA Focuses On Federal Strategy

Posted: May 04, 2015

Environmentalists have settled their lawsuit over EPA's delay in responding to their petition seeking a review of the risks the herbicide glyphosate poses to monarch butterflies, after EPA announced that it is waiting to release a pending pollinator protection strategy and complete a broader review of glyphosate before addressing the petition.

In filings in the case *Natural Resources Defense Council (NRDC) v. EPA*, attorneys for EPA say agency scientists are already weighing risks of the herbicide glyphosate to monarch butterflies as part of the development a broad federal strategy to stem pollinator declines — due out any day. The agency's documents also say that EPA scientists are considering these same risks in an ongoing registration review of glyphosate, required under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). *Relevant documents are available on InsideEPA.com. (Doc. ID: 181127)*

Given those competing priorities, Justice Department (DOJ) attorneys in an April 2 filing, say EPA is putting those efforts ahead of answering NRDC's February 2014 petition seeking special review of glyphosate's risks to monarchs.

"EPA has delayed its response because it is engaged in — and soon to complete — broader assessments of the risks of glyphosate and threats to pollinators," the filing says. EPA "reasonably determined that it would be wasteful not to coordinate its response to the Petition with the Pollinator Action Plan, also due to be completed within the next few months."

In an April 8 order, Judge Katherine Polk Failla says the unreasonable delay case has been settled, and that details of the agreement are due to the court within 30 days. In a May 4 blog post, NRDC's Sylvia Fallon says that under the settlement agreement, EPA will answer advocates' petition by July 31.

The agreement comes soon after DOJ attorneys argued in a letter to the court that EPA's delay in answering the petition is reasonable, given ongoing agency efforts, including registration review of glyphosate and development of the federal pollinator protection strategy. NRDC sued EPA in U.S. District Court for the Southern District of New York in February, aiming to force a deadline for an agency response to the petition filed roughly a year earlier. In the petition, NRDC argues glyphosate "has decimated milkweed, the sole food source for monarch caterpillars," and "[i]n doing so, glyphosate has placed this distinctive butterfly and the annual migration in peril." EPA and the U.S. Department of Agriculture are leading a federal pollinator health task force that is slated to release this spring a strategy for implementing President Obama's June 20 memo on improving pollinator health. The memo calls for improving pollinator habitat, assessing how pesticides and other stressors contribute to declines and acting where appropriate.

As an example of pollinator declines, the memo notes that monarch populations reached their lowest level in 2013-2014 and says "there is an imminent risk of failed migration." The memo also says the federal strategy should be informed by recent research into the health of the species.

NRDC's February 2014 petition urging EPA to review potential risks of glyphosate to monarchs is part of environmentalists' broad opposition to the world's most widely-used herbicide. Groups have filed separate legal challenges to EPA's recent registration of Dow AgroSciences' Enlist Duo, which contains 2,4-dichlorophenoxyacetic acid (2,4-D) and glyphosate for use on genetically-modified (GM) corn and soybeans in more than a dozen states.

And scientists from groups including NRDC and the Center for Food Safety participated in a March 27 congressional briefing, sponsored by Rep. Peter DeFazio (D-OR) concerning the World Health Organization's (WHO) recent determination that glyphosate is "probably carcinogenic to humans," sources say.

Advocates have argued the March 20 finding by the International Agency for Research on Cancer (IARC), part of the WHO, boosts their calls for stricter EPA review of pesticide products containing glyphosate as well as for restrictions on the substance to reduce risks to monarch butterflies.

In the April 2 letter to Polk Failla, DOJ attorneys write that EPA has been reviewing glyphosate as part of its FIFRA-mandated registration review process since July 2009, and that preliminary risk assessments of the substance's potential environmental and human health risks are due to be released for public comment this spring or summer.

Drawing agency scientists who have expertise in glyphosate away from the registration review process and the development of the broader pollinator strategy so that they may conduct a narrower review of risks to monarchs would be a poor use of resources, according to DOJ attorneys.

"EPA recognized that the contours of the Pollinator Action Plan would inform EPA's approach to any threat posed by glyphosate (and other herbicides) to monarchs, and thus its response to NRDC's Petition," the DOJ attorneys say.

The DOJ letter responds to an NRDC letter days earlier, which contains environmentalists' proposed motion for summary judgment in the unreasonable delay case. In the response, EPA argues summary judgment would be premature given the agency efforts to address the issues raised by the petition, which is little more than a year old.

NRDC's March 30 letter to the court reiterates arguments that EPA has never weighed potential risks of glyphosate to monarchs and that the agency's prior 1993 ecological risk assessment of the substance predates its widespread use on GM crops.

"The monarch population has dropped to a critically low level, at which it is exceedingly vulnerable to eradication," the NRDC letter says. "Absent EPA-mandated measures to restrict or mitigate the harm caused by glyphosate, the survival of this population will continue to hang in the balance." — *Dave Reynolds*

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